STRAITS SETTLEMENTS LAW REPORTS.

PUBLISHED BY AUTHORITY.

[ORIGINAL CIVIL JURISDICTION]

HUGGARD, C.J.

June 11, 1934.

CHUNG and WONG..... Plaintiffs

vs.

C. M. LEE.....Defendant.

[SINGAPORE SUIT No. 1139 of 1932]

Arbitration—powers of arbitrator—failure to adjudicate on counter-claim mentioned in reference—supplementary award made without authority—acts by arbitrator in the absence of and without previous notice to one party—legal misconduct.

Where part of the plaintiff's claim and the whole of the counterclaim in an action were ordered by the Court to be referred to arbitration and the arbitrator so appointed made his award but owing to a misapprehension omitted to adjudicate on the counter-claim;

Held, that in the absence of authority in the Order of Court to do so he had no power to make a supplementary award, and the award was bad.

The conduct of an arbitrator in visiting and inspecting the site of the building the subject matter of the arbitration and conversing with one party regarding the subject-matter of the arbitration behind the back of and without previous notice to the other party amounts to legal misconduct rendering the award liable to be set aside.

This was a motion by the plaintiffs in the above action to set aside an Award and a Supplementary Award by an arbitrator made in the reference to arbitration before him under an Order of Court dated the 15th August, 1933, made in the action.

The plaintiffs, who were architects, were employed by the defendant to prepare plans and supervise the construction of a house for the defendant, and they claimed payment of their fees as such architects.

The defendant disputed the claim and counterclaimed for damages on the ground that plaintiffs were negligent in drawing up their plans and in the supervision of the construction of the building.

At the trial of the action, the Judge ordered part of the plaintiffs' claim, and the whole of the counterclaim, to be referred to the arbitration and award of the Government Architect, and, failing him, to the arbitration and award of two arbitrators, one to be appointed by each party.

The arbitrator held his enquiry on the 22nd on September, 1933, and published his Award on the 27th of September, 1933. The Award dealt only with such part of the claims as was referred, but omitted to deal with the counterclaim. When the arbitrator's attention was drawn to the omission by the plaintiffs' solicitors, he published a Supplementary Award dated the 3rd of October, 1933, dealing with the counterclaim.

The plaintiffs claimed to set aside the Award and Supplementary Award on the following grounds:—

(1) That a day or two before the date of enquiry, the arbitrator had visited and inspected the site of the building the subject of the arbitration, in the presence of the defendant but in the absence of and without any previous notice to the plaintiffs.

(2) That the arbitrator again visited the site on a date between the publication of the Award and the publication of the Supplementary Award.

(3)That the arbitrator had held his enquiry and had made his Award whilst under the mis-apprehension that he was empowered to deal only with such part of the plaintiffs' claim as was referred to him and not the counterclaim.

The plaintiffs in their affidavit alleged that the arbitrator on his two visits had not only inspected the site but had also talked with the defendant and asked questions of the defendant with reference to the subject matter of the arbitration and listened to the defendant's answers thereto, and that they were not present with the defendant on either visit nor were they given any previous notice of the arbitrator's intention to visit the site.

The arbitrator filed an affidavit in which he admitted having paid the two visits, but stated that with regard to the first visit, nothing passed between the defendant and himself except that, at the arbitrator's request, the defendant identified certain portions of the building with the plans, and made remarks to the arbitrator as he went from room to room to which the arbitrator made no committal reply; while with regard to the second visit, this was occasioned by the fact that the arbitrator wanted from the defendant the figures of the counterclaim which were contained in a piece of scrap paper which was produced at the enquiry, but which was subsequently destroyed. As to the Supplementary Award, this, according to the arbitrator's affidavit, was made by the arbitrator and based on conclusions he had already arrived at on the evidence of witnesses taken before him on the 22nd day of September, 1933, when both parties

were present, and that the arbitrator had no misapprehension with regard to his power to adjudicate on the counterclaim, but his decision on the counterclaim was by error omitted from the Award, and the Supplementary Award was published when his attention was drawn by the plaintiffs' solicitors to the omission. The arbitrator further stated that whatever were the remarks made by the defendant during his two visits, such remarks were of no value and did not affect his decision nor carry any weight with him.

S. B. Tan for the plaintiffs (applicants on the Motion) submitted:—

(1) That what passed between the arbitrator and the defendant on each of the two visits amounted to private communication between one party to the arbitration and the arbitrator with reference to the subject matter of the arbitration, and as such communication took place in the absence of the other party, it constituted legal misconduct and a ground for setting aside the Awards.

(2) That the inspection itself in the company of one party to the arbitration in the absence of the other, constituted legal misconduct sufficient to set aside the Awards.

(3) That if once the Court was satisfied that there was legal misconduct, the Court should not take into consideration the nature of the statements or remarks however trivial received by the arbitrator from one party to the arbitration in the absence of the other, or the probability of such statements or remarks having influenced the decision, and the question whether the arbitrator could have made any other award was immaterial.

(4) That from the evidence, it was clear that the arbitrator held his enquiry whilst under the misapprehension that he had no authority to adjudicate on the counterclaim, and that he published his Supplementary Award when he was told of the nature and extent of his authority. In any case, once an arbitrator had made his award, he was *functus officio*, and an arbitrator had no power to make more than one Award unless expressly authorised to do so. He cited *Re Gregson and Armstrong*, 70 L.T. 106; *Walker* v. *Frobisher*, 6 Vesey Jr. 69a; *Harvey* v. *Shelton*, 7 Beavans 455; *Dobson* v. *Groves*, 6 Q. B. Reports 637; *In Re Brien and Brien*, (1910) 2 Ir. Rep. 84; *Royal Commission on Sugar Supply* v. *Trading Society Kwik-Hoo-Tong*, (1922) 38 T.L.R. 640; *Gould* v. *Staffordshire Potteries Waterworks*, (1850) 5 Exch. 214 at p. 223; *Winter* v. *White*, 2 Moore 723.

D. G. Osborne-Jones for the defendant (respondant on the Motion) submitted:—

(1) That what passed between the arbitrator and the defendant on the two visits was mere conversation, which the arbitrator did not treat or take down in writing as evidence, and an award could only be set aside if evidence of one party was taken by the arbitrator in the absence of the other.

(2) That what passed was of no importance, and the arbitrator could not have made any other award.

(3) That with regard to the Supplementary Award, this was made by the arbitrator to correct an accidental omission and an arbitrator had power to do so under Section 8 of Ordinance No. 51 (Arbitration).

He distinguished the authorities cited on behalf of the plaintiffs to *Sutherland & Co.* v. *Hannevig Bros. Ltd.*, (1921) 1 K. B. 336.

HUGGARD, C. J., in giving an oral judgment setting aside the Award and Supplementary Award, said that he preferred to set aside the Award and Supplementary Award on the ground that an arbitrator had no power to make more than one Award unless expressly authorised to do so. In this case, the Supplementary Award could not be treated as a mere correction of an accidental omission, and as there was no authority in the Order of Court to enable the arbitrator to make more than one Award, the Award and Supplementary Award must be set aside. As regards the question of misconduct, he was satisfied that there had been legal misconduct on the part of the arbitrator and the Awards were liable to be set aside on that ground also. It was clear from the authorities that where there was legal misconduct, the Court would not enquire into the nature of what had passed between the arbitrator and one party to the arbitration in the absence of the other with a view to arriving at a decision as to the probability of the arbitrator having been thereby influenced.

Award and Supplementary Award set aside with costs to the plaintiff-applicants.

Solicitors for plaintiff-applicants—
Donaldson & Burkinshaw.

Solicitor for defendant-respondent—
D. G. Osborne Jones.